

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE

In re:

CHARLES E. WALKER,
Debtor.

} Case No. 3:16-bk-03304
Chapter 11
Judge Mashburn

**RESPONSE TO DEBTOR'S MOTION TO REOPEN ADMINISTRATIVELY
CLOSED INDIVIDUAL CHAPTER 11 CASE AND DIRECTING [sic] ENTRY
OF DISCHARGE AND FINAL DECREE**

Carl Chambers responds as follows to the Debtor's Motion to Reopen Administratively Closed Individual Chapter 11 Case and Directing Entry of Discharge and Final Decree (Dkt. 1130) filed November 15, 2018:

1. The Debtor asserts that he is entitled to a discharge and that his Chapter 11 proceeding should be reopened for that purpose. It does not appear that Mr. Walker is entitled to a discharge, but even if he were, it would be without prejudice to Mr. Chambers' rights.
2. First, it is not entirely clear that Mr. Walker is entitled to a discharge or order. On August 31, 2018, Mr. Chambers filed a motion in the Tennessee Chancery Court seeking leave to join himself and Mr. Walker to a lawsuit pending there for the purpose of asserting against Mr. Walker, *inter alia*, claims under 28 U.S.C. § 1964. (*See Ex. 1.*) Those, of course, are claims described in 11 U.S.C. § 522(q)(1)(B) that would prevent entry of a discharge order. *See 11 U.S.C. § 1141(d)(5)(C)(ii).* Mr. Chambers' motion has never been granted, however. Thus, neither Mr. Chambers nor Mr. Walker is presently a party to the case in which that motion was filed and the claims may be asserted, *see Freeman v. Blue Ridge Paper Prods. Inc.*, 551

F.2d 405, 409–10 (6th Cir. 2008); *Carson v. Challenger Corp.*, No. W2006-00558, 2007 WL 177575, at *4–5 (Tenn. Ct. App. Jan. 25, 2007).

3. Mr. Chambers has not succeeded in locating any judicial interpretations of Section 1141(d)(5)(C)(ii). It is thus not entirely clear how broadly the language in that provision should be read. Yet a straightforward reading of the language indicates that it applies here: there is “pending [a] proceeding” and there is a possibility that Mr. Walker could be “found … liable for a debt of the kind described in section 522(q)(1)(B)” in that proceeding. Had Congress intended Section 1141(d)(5)(C)(ii) to impose a more rigorous requirement, it could easily have done so, simply, e.g., by specifying that the proceeding be pending “against the debtor” or that the debtor be a “party” to the proceeding. The breadth of Congress’s language, requiring merely any proceeding and a possibility of a finding of liability, suggests that it intended the limitation found in Section 1145(d)(5)(C)(ii) to apply broadly. To the extent that Mr. Walker is not entitled to a discharge at the present, there is no reason to reopen his bankruptcy proceeding.

4. Second, Mr. Chambers was indisputably not notified of Mr. Walker’s bankruptcy proceeding in time to assert his claims in it. The claims he seeks to bring against Mr. Walker, moreover, are of the type described in 11 U.S.C. § 523(a)(2), (4), or (6); they are thus exempted from the scope of any discharge by 11 U.S.C. § 523(a)(3)(B).

5. Moreover, the viability and dischargeability of Mr. Chambers’ claims cannot be adjudicated via a contested matter under Federal Rule of Bankruptcy Proce-

dure 9014, as Rule 7001 requires that such matters be heard, if at all, via adversary proceeding.

6. Thus, even if the Court were to read Section 1141(d)(5)(C)(ii) more narrowly and conclude that Mr. Walker is entitled to a discharge, any discharge order would not adjudicate the dischargeability of claims against Mr. Walker, such as those Mr. Chambers seeks to assert, governed by Section 523(a)(3)(B).¹

Respectfully submitted,

s/ Paul J. Krog

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Certificate of Service

I hereby certify that on December 6, 2018, I filed the foregoing via the Court's ECF system, which is expected to deliver it via electronic means to counsel of record, including the following:

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¹ Irrespective of whether or not the Court grants Mr. Walker's motion to reopen and enter a discharge order, it should make clear in doing so that Mr. Walker did not have a discharge heretofore. It should do so if for no other reason because Mr. Walker is, at the same time as he has come here seeking a discharge, claiming that he has already received one. (See Ex. 2.)

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